

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BARBARA ANN DECKER,

Petitioner,

v.

**CIVIL ACTION NO. 2:08 CV 97
CRIMINAL ACTION NO. 2:06 CR 31-1
(Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

On September 12, 2008, petitioner Barbara Ann Decker, through counsel, filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. This case was referred to United States Magistrate Judge David J. Joel for preliminary review and report and recommendation in accordance with Rules 83.01, *et seq.*, of the Local Rules of Prisoner Litigation Procedure and Standing Order No. 4.

By Order entered October 8, 2008, Magistrate Judge Joel indicated that his preliminary review of the petitioner's § 2255 Motion had revealed that summary dismissal of the same was not appropriate. Accordingly, Magistrate Judge Joel's October 8, 2008, Order directed the respondent to file an Answer to the petitioner's § 2255 Motion within thirty days from the date of entry thereof.

Thereafter, by Order entered October 9, 2008, Magistrate Judge Joel granted a Motion to Amend 28 U.S.C. § 2255 Motion that had been filed by the petitioner on that same date. The petitioner's Amended Motion to Vacate, Set Aside or Correct Sentence Pursuant To 28 U.S.C. § 2255 was filed on October 17, 2008.

The Government's Response of The United States to Petitioner's Motion Under 28 U.S.C. § 2255 Motion was timely filed on October 23, 2008.

On February 2, 2010, Magistrate Judge Joel issued an Opinion/Report and Recommendation wherein he recommended that the petitioner's Amended Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 be denied and the above-styled case be dismissed from the docket with prejudice. Specifically, Magistrate Judge Joel found that the Petitioner was procedurally barred from raising the claim that the 41 month term of imprisonment imposed on her was procedurally unreasonable since she had failed to rebut the presumption that said sentence was reasonable and since she had failed to proffer any cause for her failure to raise that claim on direct appeal and, for that reason, could not prove prejudice. Additionally, Magistrate Judge Joel found that the petitioner was barred from raising the claim that her sentence was substantively unreasonable since said claim, even if true, would not constitute a miscarriage of justice.

In his Opinion/Report and Recommendation, Magistrate Judge Joel provided the parties with fourteen (14) days from the date they were served with a copy of said Opinion/Report and Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report and Recommendation.

The Court's review of the docket in the above-styled *habeas corpus* action reveals that Petitioner Barbara Decker's Objections to Magistrate Report and Recommendation were filed on February 19, 2010.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). The Court has conducted a *de novo* review only as to the portions of the Opinion/Report and Recommendation to which the petitioner objected. The remaining portions of the Opinion/Report and Recommendation to which the petitioner has not objected have been reviewed for clear error.

Based upon its review, the Court is of the opinion that Magistrate Judge Joel's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Further, upon consideration of the petitioner's Objections to Magistrate Report and Recommendation, it appears to the Court that the petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Joel in his Opinion/Report and Recommendation. Accordingly, it is

ORDERED that the Opinion/Report and Recommendation entered by United States Magistrate Judge Joel in the above-styled *habeas corpus* action on February 2, 2010 (Doc. 67), be, and the same is hereby, **ACCEPTED**, and that the petitioner's Amended Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 64) be, and the same is hereby, **DENIED**. It is further

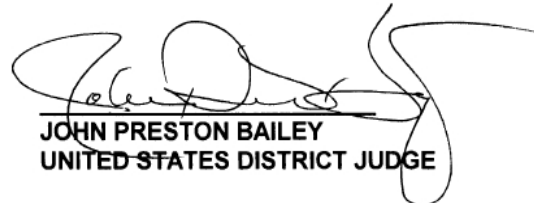
ORDERED that the above-styled *habeas corpus* action be, and the same is hereby, **DISMISSED** with prejudice and **STRICKEN** from the docket of the Court.

It is further

ORDERED that, should the petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* petitioner and to counsel of record herein.

DATED: July 30, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE